



American Land Title Association

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CFPB Director Acknowledges ALTA Concerns with Three-day Rule July 2, 2013

A letter from the director of the Consumer Financial Protection Bureau (CFPB) to members of Congress acknowledges the Bureau is concerned about issues regarding its proposed rule integrating mortgage disclosures required under the Real Estate Settlement Procedures Act and the Truth In Lending Act.

Richard Cordray, the CFPB's director, was responding to recent letters written by Reps. Steve Stivers and Ed Perlmutter and co-signed by 82 members of Congress, who stated concerns with a provision in the proposal that would require that consumers receive the Closing Disclosure at least three days before closing on the loan. During ALTA's Lobby Day, Federal Conference attendees encouraged members of Congress to sign the letters. Also, members of the Title Action Network took action encouraging their representative to sign as well.

The letter from the members of Congress asked the Bureau to ensure the three-day rule doesn't harm consumers and explore options that balance the intent of the three-day rule with how it would apply to consumers in the market.

In his letter, Cordray said the Bureau is sensitive to how the three-day rule could impact consumers and business and is open to continuing the dialogue as this process moves forward. In a July 1 meeting with Michelle Korsmo, ALTA's chief executive officer, and Justin Ailes, ALTA's vice president of legislative and regulatory affairs, Cordray said that the CFPB will release its final rule "this fall."

Currently under the CFPB's proposal, if a fee being paid by the borrower increases or decreases during the three-day period—subject to limited exceptions—the borrower must be given an updated Closing Disclosure. This will then result in a delay of three additional business days before closing.

ALTA agrees with the members of Congress that without greater flexibility enabling consumers to accept changes within the three days, the CFPB's proposal could result in borrowers missing contractual deadlines and potentially losing the opportunity to finance their home purchase.

The Bureau has proposed these exemptions that will not trigger a new three-day waiting period:

- Seller – Buyer negotiation
- Minor cost increase
- Post Closing change to government fee
- Correct non numerical clerical error
- Tolerance refund

There is an exception for minor changes that result in less than \$100 in increased costs.

In his letter, Cordray wrote that the Bureau understands that things do sometimes change between the time of a three-day disclosure and the closing, and that not all changes justify delaying the closing date. He added that the Bureau is reviewing suggested modifications or the addition of new exceptions "to determine the most appropriate way to provide meaningful consumer disclosure while, at the same time, avoid unnecessary delays in closings."

ALTA believes that more exceptions are needed to protect consumers from the unnecessary harms caused by delaying their closings. ALTA has suggested the following exceptions:

- Closing costs paid by or on behalf of the buyer, but unrelated to the loan costs (such as changes to or decisions to purchase property insurance coverages, flood insurance, owner's title insurance or the like)
- Payment to discharge any defects, liens, encumbrances or other matters requiring curative action which are discovered in a title search or examination
- All prorations as long as the underlying per-day rate does not change or they are paid to a state or local government instrumentality or authority
- Recording costs and other fees incurred due to additional documentation used for the consumer's convenience (such as a power of attorney)
- Any increase in the borrowers' costs due to a change to the sales contract, mutually agreeable to the buyer and seller and not objected to by the lender, or as a result of local custom or practice regardless of when the change is made or the amount of the change

For more questions about the CFPB's RESPA/TILA rule or ALTA's advocacy, email justin@alta.org.

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